

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

PHYLLIS CAMPBELL,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-04-904-M
)	
JO ANNE B. BARNHART,)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	

ORDER

On July 5, 2005, United States Magistrate Judge Shon T. Erwin issued Findings and Recommendation in this action in which plaintiff seeks judicial review of the final decision of defendant Commissioner of Social Security Administration (“Commissioner”), denying plaintiff’s application for disability insurance benefits under 42 U.S.C. §§ 416(i) and 423. The Magistrate Judge recommended the Commissioner’s decision in this matter be affirmed. The parties were advised of their right to object to the Report and Recommendation by July 25, 2005, and on that date, plaintiff filed her objection.

In her objection, plaintiff contends that the Administrative Law Judge (“ALJ”) erred in his evaluation of plaintiff’s pain and consequently erred in determining her residual functional capacity. Specifically, plaintiff asserts the ALJ erred by not conducting a “point by point evaluation” of the factors used to evaluate a claimant’s credibility which are set forth in 20 C.F.R. § 1529.¹ The Tenth Circuit, however, has held that “a formalistic factor-by-factor recitation of the evidence” is not required. *Qualls v. Apfel*, 206 F.3d 1368, 1372 (10th Cir. 2000). Having carefully reviewed the

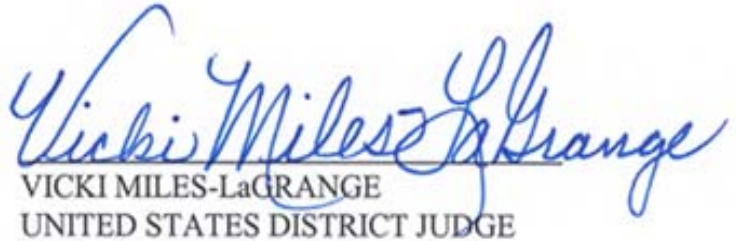
¹A review of the briefs previously filed in this case reveals plaintiff made virtually the same argument in her opening brief [docket no. 11].

ALJ's decision, plaintiff's opening brief, and her objection, the Court finds that the ALJ did not err in his credibility evaluation and, consequently, did not err in determining plaintiff's residual functional capacity.

Accordingly, the Court:

- (1) ADOPTS the Findings and Recommendation issued by the Magistrate Judge on July 5, 2005, and
- (2) AFFIRMS the decision of the Commissioner.

IT IS SO ORDERED this 19th day of August, 2005.



VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE